

REMARKS/ARGUMENTS

Favorable consideration of this application is respectfully requested. Applicant has rewritten claims 43, 45, 48-50, 53, 55, 56, 58-61 canceled claims 47, 52, 57 and added new claims 62-64. Favorable reconsideration of this application is, consequently, earnestly solicited in view of the following remarks.

Applicant notes that the subject divisional application is intended to read on embodiments that are shown in Figures 14, 15a and 15b of the subject invention, which are NOT the subject of previously filed and issued patents.

As to the objection to the specification, applicant has amended the abstract accordingly. Thus, removal of this objection is requested.

Claims 43-61 were rejected under the judicially created doctrine of obviousness type double patenting as being rejected over claims to U.S. Patent 6,637,150 issued October 28, 2003; U.S. Patent 6,298,597 B1 issued October 9, 2001; U.S. Patent 6,606,816 B2 issued August 19, 2003; and U.S. Patent 6,606,817 B2 issued August 19, 2003, which are all to the same assignee as that of the subject invention.

Applicant has filed a terminal disclaimer with the subject amendment response. Thus, removal of this rejection is respectfully requested.

Claims 43-61 were rejected under judicially created doctrine of double patenting over claims 1-38 of copending application 10/098,017 and claims 1-33 of copending application 10/097,813. The examiner goes on to state that this "is a provisional double patenting rejection since the conflicting claims have not yet been patented."

This rejection is in error since both copending applications have matured into ISSUED PATENTS. Application 10/098,017 matured into U.S. patent 6,606,817 and application 10/097,813 matured into U.S. patent 6,606,816.

Additionally, a careful review of both of these issued patents clearly shows that the claims in these patents cover different embodiments than that of the subject application. The subject application claims embodiments covered by Figures 14, 15a and 15b which are clearly NOT covered by the claims of these issued patents. Thus, removal of this rejection is respectfully requested.

Claims 45 and 55 were rejected under sec. 112, second paragraph as being indefinite. Applicant has amended these claims accordingly. Thus, removal of this rejection is respectfully requested.

Claims 43-47 and 49-61 were rejected under sec. 103 as being unpatentable over Adams'108 in view of Thorne'672. Applicant notes that both of these references were cited together in at least parent patent application to the subject invention which was application 10/097,813 which matured into U.S. Patent 6,606,816. Applicant further notes that the same examiner "Andrea Valenti" is the examiner on both the subject invention and the parent patent application, and that a similar claimed feature of a "mixture of a foraging non-edible matrix mixed with a slow-acting and non-repellant toxicant..." was found to be patentable in the parent patent application, of which this similar feature is found in the claims of the subject application.

MPEP section 706.04 states that full faith and credit should be given to the action of a previous examiner unless there is clear error in the previous action or knowledge of other prior art. The examiner should not take an entirely new approach or attempt to

reorient the point of view of a previous examiner in mere hopes of finding something.

Amgen Inc. v. Hoechst Marion Roussel, Inc. 126 F. Supp. 2d 69, 139, 57 USPQ 2d 1449(D-Mass 2001). Here, the same examiner has allowed a similar feature in previous issued patents after reviewing and evaluating the same references. Applicant respectfully requests removal of this rejection for at least these reasons.

Additionally, neither the Adams '108 reference and/or the Thorne '672 reference describes, teaches, nor suggests alternating layers of a "mixture layer of a non-edible foraging matrix mixed with a slow-acting and non-repellant toxicant..." which is similarly claimed in the independent claims of the subject invention. Specifically, independent claims 43 and 56 further claim "the foraging non-edible matrix includes at least one of: soil, sand, gravel, rocks, pebbles, shale, and mixtures thereof", which is not described, taught nor suggested by these references. Thus, removal of Adams '108 and Thorne '672 is requested.

Claims 43, 44, 46-54 and 56-61 are rejected under sec. 103 as being unpatentable over Ballard '961. The rejection goes onto state that "Thorne" is also used in this rejection. Again, applicant notes that both of these references were cited together in at least parent patent application to the subject invention which was application 10/097,813 which matured into U.S. Patent 6,606,816. Applicant further notes that the same examiner "Andrea Valenti" is the examiner on both the subject invention and the parent patent application, and that a similar claimed feature of a "mixture of a foraging non-edible matrix mixed with a slow-acting and non-repellant toxicant..." was found to be patentable in the parent patent application, of which this similar feature is found in the claims of the subject application.

Again, MPEP section 706.04 states that full faith and credit should be given to the action of a previous examiner unless there is clear error in the previous action or knowledge of other prior art. The examiner should not take an entirely new approach or attempt to reorient the point of view of a previous examiner in mere hopes of finding something. *Amgen Inc. v. Hoechst Marion Roussel, Inc.* 126 F. Supp. 2d 69, 139, 57 USPQ 2d 1449(D-Mass 2001). Here, the same examiner has allowed a similar feature in previous issued patents after reviewing and evaluating the same references. Applicant respectfully requests removal of this rejection for at least these reasons.

Additionally, neither the Ballard reference and/or the Thorne '672 reference describes, teaches, nor suggests alternating layers of a "mixture layer of a non-edible foraging matrix mixed with a slow-acting and non-repellant toxicant..." which is similarly claimed in the independent claims of the subject invention. Specifically, independent claims 43 and 56 further claim "the foraging non-edible matrix includes at least one of: soil, sand, gravel, rocks, pebbles, shale, and mixtures thereof", which is not described, taught nor suggested by these references. Thus, removal of Ballard and Thorne '672 is requested.

Claims 45 and 55 were rejected under sec. 103 as being unpatentable over Ballard as applied above and further in view of Kobayashi. The Kobayashi reference does not overcome the deficiencies to Ballard described above. Kobayashi does not describe, teach, nor suggests alternating layers of a "mixture layer of a non-edible foraging matrix mixed with a slow-acting and non-repellant toxicant..." which is claimed in the subject application.

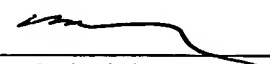
Additionally, applicant believes that the dependent claims of the subject application also include novel features that are not described, taught, nor suggested by the references of record. Specifically, for example, the "air layer" of claim 48, additional different "non-toxic layer" for attracting different arthropods of claim 49, and 58, additional "mixture layer" of claim 59, different arthropods of claims 53, 60, approximately 1/4 inch thickness of the layers of claims 62, 63, and sixth and seventh layers of claim 64, are not described, taught, nor suggested by the prior art of record.

Japanese patent '759 cited but not applied also fails to overcome the deficiencies to the other references described above.

Applicant contends the references cannot be modified to incorporate the features of subject claims 43-46, 48-51, 53-56 and 58-64 without utilizing Applicant's disclosure. The courts have consistently held that obviousness cannot be established by combining the teachings of the prior art to Applicant to produce the claimed invention, absent some teaching, suggestion, incentive or motivation supporting the combination.

In view of the foregoing considerations, it is respectfully urged that claims 43-46, 48-51, 53-56 and 58-64 be allowed. Such action is respectfully requested. If the Examiner believes that an interview would be helpful, the Examiner is requested to contact the attorney at the below listed number.

Respectfully Submitted;


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